

AMENDED IN ASSEMBLY APRIL 26, 2010

AMENDED IN ASSEMBLY APRIL 7, 2010

CALIFORNIA LEGISLATURE—2009–10 REGULAR SESSION

ASSEMBLY BILL

No. 2717

Introduced by Assembly Member Skinner

February 19, 2010

An act to amend Section 787.1 of the Insurance Code, relating to insurance.

LEGISLATIVE COUNSEL'S DIGEST

AB 2717, as amended, Skinner. Insurance: agents and brokers: senior designation: use.

Existing law provides that a broker or agent may not use a senior designation unless he or she has met certain conditions, including, but not limited to, that the broker or agent has been granted the right and is currently authorized to use the senior designation by the organization that issues the designation, and the senior designation has been approved by the Insurance Commissioner for use by brokers and agents in the sale of insurance to seniors, as provided.

This bill would require that the commissioner approve a senior designation only if the organization that issues the designation satisfies specified requirements, including, but not limited to, accreditation standards, education and examination requirements, and having minimum standards and procedures regarding disciplining the organization's designees for improper or unethical conduct.

The bill would authorize the commissioner to rescind approval of a designation, under specified circumstances, after notice and a hearing conducted by an administrative law judge, pursuant to the administrative

adjudication formal hearing provisions of the Administrative Procedure Act.

This bill would also make conforming changes and delete obsolete provisions.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Section 787.1 of the Insurance Code is amended
2 to read:
3 787.1. (a) The following definitions apply to this section:
4 (1) “Senior designation” means any degree, title, credential,
5 certificate, certification, accreditation, or approval, that expresses
6 or implies that a broker or agent possesses expertise, training,
7 competence, honesty, or reliability with regard to advising seniors
8 in particular on finance, insurance, or risk management.
9 (2) “Use” means utilizing a word, phrase, acronym, or logo, in
10 any oral or written communication from which a sale of insurance
11 to a senior may directly or indirectly result, that states or suggests,
12 alone or in context, that a broker or agent holds a senior
13 designation.
14 (b) (1) A broker or agent may not use a senior designation
15 unless all of the following conditions have been met:
16 (A) The broker or agent has been granted the right to use the
17 senior designation by the organization that issues the senior
18 designation, and the broker or agent is currently authorized by the
19 organization to use the designation.
20 (B) The senior designation has been approved by the
21 commissioner for use by brokers and agents in the sale of insurance
22 to seniors.
23 (C) The broker or agent has been licensed for at least four years
24 in any state or United States territory to sell the types of insurance
25 with which the designation is used.
26 (2) A broker or agent may not use a senior designation in a
27 manner that misleads a person as to the significance of the senior
28 designation. Each time a broker or agent uses a senior designation
29 in a writing, the writing shall also contain the words “California”
30 or “CA” next to “Insurance Agent” or “Insurance Broker Agent”
31 and “License,” and these words shall be located immediately prior

1 to the broker's license number or the agent's license number, in
2 type that is in the same font and at least the same size as the type
3 used for the senior designation. The requirements set forth in this
4 subdivision are in addition to the requirements of Section 1725.5
5 and shall apply regardless of whether the broker or agent is an
6 insurance agent, as defined in Section 1621. For purposes of this
7 paragraph, "writing" means business cards, written price
8 quotations, and print advertisements distributed exclusively in this
9 state.

10 (c) The commissioner shall approve a senior designation only
11 if the organization that issues the designation satisfies all of the
12 following requirements with respect to the designation:

13 (1) The organization has applied for approval on a form
14 prescribed by the commissioner.

15 (A) A designation shall not be approved if an incomplete
16 application form is submitted to the department. The incomplete
17 application shall remain on file for one year unless withdrawn by
18 the applicant. After one year, a new application is required. The
19 department shall notify the applicant when the application and all
20 required supporting documents have been received; however,
21 notification that an application is complete does not mean approval
22 has been or will be granted. The department shall decide whether
23 to approve a designation within 90 days of receiving a completed
24 application and all required supporting documents and additional
25 information. If the department initiates an investigation of an
26 applicant on suspicion that grounds exist to deny the application,
27 the 90-day period shall be tolled until the completion of the
28 investigation. If, after the completion of the investigation, the
29 applicant is referred to the department's legal division, the
30 department shall have an additional 45 days from the date of the
31 referral to issue a statement of issues pursuant to Section 11504
32 of the Government Code, or to issue the approval.

33 (B) The department may require the filing of any supplementary
34 documents and declarations it deems necessary to determine
35 whether the prerequisites for approval have been met.

36 (C) An organization shall notify the department in writing within
37 45 days following any material change in information recorded
38 on the application form or in declarations or documents submitted
39 along with it or in response to a department request.

(2) The designation is accredited by the National Commission for Certifying Agencies, or the organization or the designation is accredited by an agency that is on the United States Department of Education's list entitled "Accrediting Agencies Recognized for Title IV Purposes" and the agency is clearly and convincingly qualified to accredit an organization or designation involved with financial services provided to seniors.

(3) (A) The organization requires California candidates for the designation to ~~pass~~ *demonstrate superior expertise in advising seniors in particular in finance, insurance, or risk management by passing* examinations that are based on applicants with no prior insurance education or experience completing at least 75 hours of study covering at least the following topics: aspects of aging, health care coverage, long-term care insurance, financial planning for retirement, investments, estate planning, and ethics. Textbooks or other study materials may use chapter and subchapter titles that differ from those general topics as long as the essential content is the same.

(B) A designation may be approved without the organization that issues it establishing compliance with subparagraph (A) if, in the opinion of the commissioner, the organization has proven clearly and convincingly both of the following:

(i) Its examinations ensure that its designees generally possess superior expertise in advising seniors in particular in finance, insurance, or risk management comparable to a designee who has completed a course of study pursuant to subparagraph (A).

(ii) Study material typically used to prepare for the examinations cover most of the topics recited in subparagraph (A).

(d) (1) In determining whether to approve a senior designation for use in the sale of insurance to seniors, the commissioner shall also ensure that the organization that issues the senior designation fulfills the following:

(A) Is exclusively an educational or certification organization, and is not directly or indirectly, through an affiliate or partner, involved in selling insurance, nor receives any compensation directly or indirectly from any sale of insurance, *other than the receipt of charitable gifts to a nonprofit institution.*

(B) Maintains standards and procedures for disciplining its designees for improper or unethical conduct, as established by proven complaints or by disciplinary action by a government

1 licensing agency or a quasi-governmental licensing and regulatory
2 organization. The standards and procedures shall include, at a
3 minimum:

4 (i) A written procedure to receive, log, and conduct a preliminary
5 review of complaints alleging improper, illegal, or unethical
6 conduct.

7 (ii) Written standards for determining when a complaint warrants
8 further investigation into the merits of the allegations contained
9 therein.

10 (iii) Written standards and procedures to ensure that, once a
11 complaint is determined to warrant further investigation, the
12 investigation is diligently conducted.

13 (iv) Written standards for determining when to file disciplinary
14 charges based on the results of an investigation.

15 (v) Written standards and procedures to ensure due process in
16 the adjudication of disciplinary charges by adjudicators who are
17 fair, knowledgeable, and otherwise qualified.

18 (vi) Written standards and procedures for the imposition of
19 appropriate sanctions, including, when warranted, revocation of
20 the designation.

21 (C) Maintains a code of ethics for its California designees
22 consistent with that of one of the designations recited in Section
23 1749.4.

24 (e) (1) A word, phrase, acronym, or logo shall be deemed a
25 senior designation if it contains the word “senior,” “Medicare,”
26 “Medi-Cal,” “*retire*,” “mature,” “gerontology,” or “elder,” or any
27 variation or synonym of one of these words within several words
28 of the word “certified,” “chartered,” “registered,” “adviser,”
29 “specialist,” “consultant,” “agent,” “broker,” “insurance,”
30 “planner,” “professional,” “enrolled,” “accredited,” “analyst,” or
31 “fellow,” or any variation or synonym of one of these words. A
32 word, phrase, acronym, or logo may constitute a senior designation
33 if it meets the definition in paragraph (1) of subdivision (a)
34 regardless of whether it contains one of the words recited in this
35 subdivision.

36 (2) A word, phrase, acronym, or logo shall not constitute a senior
37 designation if it is a job title or description of an employee of a
38 government entity, or of an organization with a contract with that
39 government entity to provide free counseling to seniors.

1 (3) No exemption exists under this section for use of a senior
2 designation that constitutes a job title or description or part of a
3 job title or description, except as provided in paragraph (2).

4 (4) An advanced academic degree, such as a Ph.D., M.B.A., or
5 M.S., may be used without compliance with subdivision (d), if the
6 degree was awarded by an institution of higher education that has
7 been accredited by an organization that is on the United States
8 Department of Education's list entitled "Accrediting Agencies
9 Recognized for Title IV Purposes."

10 (f) A violation of subdivision (b) by a broker or agent shall be
11 grounds for suspension or revocation of the broker or agent's
12 license pursuant to Sections 1668 and 1738. Such a violation also
13 shall be grounds for a cease and desist order and monetary penalty
14 pursuant to Section 12921.8, as if the broker or agent had acted in
15 a capacity for which a license was required but not possessed.

16 (g) Any person who grants to a California resident the right to
17 use a senior designation that has not been approved by the
18 commissioner, without reasonably attempting to determine whether
19 California is one of the designee's residences, shall be subject to
20 a cease and desist order and monetary penalty pursuant to Section
21 12921.8, as if the person had acted in a capacity for which a license
22 was required but not possessed.

23 (h) The disciplinary and remedial authority recited in this
24 subdivision shall be in addition to any other disciplinary and
25 remedial authority included in this code.

26 (i) Notwithstanding any other provision of this code, the criteria
27 in Sections 1668 and 1668.5 apply to an organization that issues
28 a senior designation, and the commissioner may deny or rescind
29 approval of an organization issuing a senior designation based on
30 that criteria.

31 (j) The commissioner shall maintain a list of senior designations
32 approved pursuant to subdivisions (c), (d), and (e) and shall publish
33 the current list on the Internet Web site of the Department of
34 Insurance.

35 (k) This section shall apply to all types of insurance, including
36 those listed in paragraphs (1) and (2) of subdivision (c) of Section
37 785, except those listed in paragraphs (3) to (7), inclusive, and
38 paragraph (9) of subdivision (c) of Section 785 and subdivision
39 (d) of Section 785.

(l) The commissioner may, upon receipt of a petition from an organization, issue written confirmation that a designation issued by that organization is exempt from the requirement of approval pursuant to this section. The commissioner may issue confirmation if the designation, according to its title or curriculum, or in its actual use, concerns almost exclusively subject matters other than insurance or financial services sold to seniors in particular.

(m) (1) The commissioner may rescind approval of a designation whenever there has been a material change in the management or operation of the organization that issues the designation, or in the procedures or criteria for issuance of the designation, such that if the organization were to apply for approval of the designation subsequent to the change, approval would be denied.

(2) Any rescission of the approval of a designation shall be after notice and a hearing conducted in accordance with Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code, as if the approval were a license, and the commissioner shall have all of the powers granted therein.

CORRECTIONS:

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